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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,072	04/06/2004	Greg W. Melchoir	08541-01 ESCM 370093-0015	7232
8840	7590	05/06/2005	EXAMINER	
ECKERT SEAMANS CHERIN & MELLOTT, LLC ALCOA TECHNICAL CENTER 100 TECHNICAL DRIVE ALCOA CENTER, PA 15069-0001			DURAND, PAUL R	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/820,072

Applicant(s)

MELCHOIR ET AL.

Examiner

Paul Durand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 and 13-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species I in the reply filed on 2/14/05 is acknowledged.
2. Claims 6-9 and 13-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2/14/05.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausnit (US 3,532,571) in view of Lipes (US 4,291,517).

In regard to claims 1, 3 and 11, Ausnit discloses the invention substantially as claimed including an apparatus for opening a closure mechanism comprised of first and second closure profiles 37 and 38, a wedge in the form of slit 45, blade in the form of separator finger 44 and channel formed between the wedge and shoe 46 for guiding the closure profile (see Figs. 3-5 and C2, L28 – C3, L65). What Ausnit does not disclose is the use of a reciprocating piston to move the device in an out of an operation area.

However, Lipes teaches that it is old and well known in the art to provide a piston (no

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number given, but generally by 20), which reciprocates and has means to insert a wedge into a closure mechanism in the form of the top of the bag for the purpose of opening a bag prior to filling (see Fig. 1 and C2,L41-68). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Ausnit with the reciprocating means as taught by Lipes for the purpose of opening a bag prior to filling.

In regard to claim 2, the modified invention of Ausnit discloses the invention substantially as claimed including a piston which moves in a reciprocating manner for the purpose of opening a bag prior to filling (see Lipes Fig. 1 and C2,L41-68).

In regard to claim 10, Ausnit discloses the invention substantially as claimed including a wedge cooperating with a channel formed between the wedge and shoe 46 (see Figs. 3-5 and C2,L28 – C3,L65).

5. Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausnit and Lipes in view of Laguerre (US 3,426,396).

In regard to claim 4, the modified invention of Ausnit discloses the invention substantially as claimed as applied to claim 1 above except for the use of guide members to guide the closure. However, Laguerre teaches that it is old and well known in the art to provide guide members 16, which are in planar alignment with wedge in the form of spacer 15 for the purpose of separating a closure profile (see Figs 7,8 and C3,L45-75). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Ausnit

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with the guide means as taught by Laguerre for the purpose of separating a closure profile.

In regard to claim 12, the modified invention of Ausnit discloses the invention substantially as claimed as applied to claim 1 above except for the use of a heater. However, Laguerre teaches that it is old and well known in the art to provide heaters 14 in a parallel arrangement for the purpose of sealing a bag onto the closure profile (see Figs 7,8 and C3,L45-75). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Ausnit with the heating means as taught by Laguerre for the purpose of sealing a bag onto the closure profile.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ausnit and Lipis in view of Bruno (US 5,334,127).

The modified invention of Ausnit discloses the invention substantially as claimed as applied to claim 1 above except for the wedge being substantially as wide as the bag width. However, Bruno teaches that it is old and well known in the art to provide an opening wedge 26, with a width that corresponds substantially to the width of a bag for the purpose of opening a closure profile (see Fig.3). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Ausnit with the wedge means as taught by Bruno for the purpose of opening a closure profile.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Perrin, Zieke, Buchman, Demura, Lerner, Koppe, Crevier and Dutra have been cited to show devices having similar structure.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand
May 2, 2005



Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700